

# **The RPSEA Rip-Off**

**How the Natural Gas Industry Extracted  
a Billion-Dollar Boondoggle from Congress**

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## **Acknowledgments**

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## **About Public Citizen**

Public Citizen is a 100,000 member non-profit organization based in Washington, D.C. We represent consumer interests through lobbying, litigation, research and public education. Founded in 1971, Public Citizen fights for consumer rights in the marketplace, safe and affordable health care, campaign finance reform, fair trade, clean and safe energy sources, and corporate and government accountability. Public Citizen has five divisions and is active in every public forum: Congress, the courts, governmental agencies and the media. Congress Watch is one of the five divisions.



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## Introduction

America's taxpayers are about to begin doling out nearly \$400 million – and possibly more than a \$1 billion – over 10 years to a natural gas research consortium that includes companies with profits that totaled \$100 billion in 2005.

In the absence of new legislation, taxpayer dollars will soon begin flowing due to a provision sneaked into the enormous 2005 energy bill under cover of night. With key support from former Rep. Tom DeLay (R-Texas), who was then the House majority leader, the provision established a 10-year, \$1.5 billion federally funded research program to find ways to extract oil and gas from “ultra-deepwater” depths and hard-to-access onshore areas. Of that, \$50 million per year is guaranteed while \$100 million per year will be available if Congress appropriates money for the program.

The measure calls for three-quarters of the “ultra-deepwater” money to go to a research consortium to be chosen through “an open, competitive process.” The rest of the money is to go to the National Energy Technology Laboratory, which is part of the Department of Energy (DOE). DOE selected a consortium, the Research Partnership to Secure Energy for America (RPSEA), in May 2006 and formalized a contract with the organization in December. RPSEA was set up by a natural gas research group that had lost a federally mandated, dedicated source of funding and led the effort to win a taxpayer-funded subsidy to help replace those lost funds.<sup>1</sup>

RPSEA members include 17 publicly traded companies that could fully fund the entire 10-year research program by setting aside just 1.5 percent of their profits from 2005 alone. These companies include such energy giants as Anadarko, Halliburton, Chevron, BP, Marathon Oil, ConocoPhillips and the French firm Total SA.

This law's journey to passage shows what is wrong with our lawmaking process and provides a textbook example of how some of the world's richest corporations foist industry research costs onto taxpayers.

It is a story of inside information, calculated tactics . . . and money – lots of it.

This plan for the taxpayers to subsidize research was hatched in the late 1990s by the Gas Research Institute (GRI), a research group that used to receive more than \$200 million in annual

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<sup>1</sup> Public Citizen's research on RPSEA included a long face-to-face interview with Melanie Kenderdine of the Gas Technology Institute and C. Kyle Simpson, a lobbyist for GTI, and two long telephone interviews with Kenderdine and Simpson. There was also a robust exchange of e-mails on substance related to the report. After those extensive interviews, in the week prior to publication of the report and having been notified of its imminent release, Kenderdine and others claiming to represent her asked for several additional face-to-face meetings. We initially agreed to one meeting, but cancelled it when time did not allow for our researcher to attend. Kenderdine's “representative” also asked for a phone conversation, but subsequently insisted on a face-to-face meeting. Public Citizen agreed to the telephone conversation, despite the late hour, but was not able to attend a face-to-face meeting due to the press of time. A letter was also sent to Public Citizen by GTI on January 12<sup>th</sup>, which offered to “review a draft” copy of the report.

subsidies from a federally mandated surcharge that gas pipeline operators collected from their customers.<sup>ii</sup>

But as deregulation diversified the gas pipeline industry in the late-1990s, pipeline operators balked at continuing to subsidize research that did not benefit them. The Federal Energy Regulatory Commission (FERC) eventually mediated a compromise that called for the subsidy to be phased out by 2004.

Hoping to come up with a source of funding to continue its existence, the Institute's board voted to pursue a new source of federal money to replace its lost revenue stream.

GRI broached its idea of a dedicated, taxpayer-funded revenue stream to Melanie Kenderdine, then a top policy aide to Energy Secretary Bill Richardson. Kenderdine advised the group that it was almost inconceivable that Congress would approve an allocation straight from the federal coffers to GRI. She recommended that the group's proposal for federal money for research call for the money to be competitively awarded; Kenderdine also suggested that a consortium, including universities and non-profits, would be best positioned to emerge the winner.

Kenderdine's recommendation laid out a path that she would help the group to follow, even eventually helping to write the legislation.

Today, Kenderdine describes herself as "the principal architect" of the research consortium program created by the legislation and "co-founder of the Research Partnership to Secure Energy for America," the non-profit created in anticipation of the legislation's enactment. Kenderdine also hired Drew Maloney, a former energy specialist on DeLay's staff, to lobby on the issue.

The Gas Research Institute changed its name to the Gas Technology Institute (GTI) in 2000 and hired Kenderdine in March 2001, shortly after she cleared out her DOE office at the end of the Clinton administration. Kenderdine would end up overseeing a lobbying budget that would top \$2 million, total, between 2002 and 2005, a dramatic increase from the group's \$60,000 to \$140,000 annual lobbying budgets in the late 1990s. The expenditures included generous allocations to two other lobbyists who previously held influential positions in the government: Maloney and C. Kyle Simpson, also an alumnus of DOE.

In 2002, GTI took the lead in establishing the neutral-sounding RPSEA. Kenderdine was RPSEA's acting president. GTI funded RPSEA initially, pledging to pump \$7 million into the consortium, mostly for research, in an apparent effort to establish the new group's bona fides. The consortium's offices eventually were established in Sugar Land, Texas, DeLay's hometown, although its books were kept at GTI's Chicago-area offices.

In summer 2005, a major energy bill that was in the works since early in the Bush administration appeared likely to pass. A provision for federal funding for research into ultra-

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<sup>ii</sup> In 2000, the Gas Research Institute (GRI) merged with the Institute of Gas Technology. The new entity is called the Gas Technology Institute (GTI).

deepwater exploration and other unconventional forms of exploration was included in the House-approved version of the bill, but stripped from the measure when it got to the Senate. Nor was the research provision included in what was supposed to be the final bill when the conference committee signed off on it in the wee hours of the morning on July 26, 2005. It appeared dead.

But then, sometime between 3 a.m. and noon that day, a quartet of leaders of the conference committee slipped the provision into the bill to be presented to the House and Senate for final passage. These leaders were favorites of companies and trade associations that were either members of RPSEA at that point, as Halliburton was, or eventually joined the consortium. These four members of Congress received more than \$325,000 in political contributions from these RPSEA members between the 2000 and 2004 election cycles. Each placed near the top of his respective chamber in amounts received from the group, including Rep. Joe Barton (R-Texas), who received the most. DeLay, who ranked sixth among House members in RPSEA-member contributions with more than \$90,000, played a key role in ensuring that the \$50 million from the trust fund would be guaranteed for all ten years, according to Kenderdine.

The House passed the bill on July 28, 2005, and the Senate followed suit the next day. The research provision required an “open, competitive process” to choose a consortium to manage a 10-year research effort. But the measure also set such narrow criteria – and laid down such tight deadlines for submission of a proposal – that it made it unlikely that RPSEA would face competition for the job.

In the end, only one group applied, and it was no surprise. It was RPSEA, a creation of GTI. DOE announced RPSEA’s selection in May 2006. The Gas Technology Institute, which became the first member to join RPSEA at its founding in 2002, will be paid \$1 million a year to help run the organization. The GTI will also be eligible, with approval of DOE, to apply for research grants from the consortium. In short, GTI created RPSEA, is a member of RPSEA, funded RPSEA, will be paid to help administer RPSEA and will be eligible to apply for grants administered by RPSEA.

The day after the subsidy was included in the final energy bill, Kenderdine, the gas institute’s chief lobbyist, was ebullient – and unfazed by the way her pet project was enacted into law. She told the Associated Press, “How the sausage is made is not important to me.”

For regular Americans, however, the question of how laws are made is critical. This report highlights the need for a specific policy remedy and changes to several systemic rules that govern the way Congress does business.

Congress should:

- Repeal the provision calling for the ultra-deepwater research subsidy.

In the absence of congressional action, taxpayers will automatically pay RPSEA \$375 million over the next decade – three quarters of the funds set aside in the \$500 million trust fund for this program. Another \$1 billion for the program is possible if Congress appropriates the money. This subsidy constitutes an absurd example of corporate

welfare for a highly profitable industry that does not need access to public dollars. The Bush administration recommended repeal of the program in 2006, yet signed a contract for \$375 million for it in December 2006.

- Ensure adherence to regular order.

The provision creating the ultra-deepwater subsidy was slipped into the 2005 energy bill after rank-and-file members of the conference committee thought they had signed off on the final bill that the full House and Senate were to vote on.

“The truth is, process matters in government,” former Rep. Lee Hamilton (D-Ind.), who spent 34 years in the House, said recently “What is called the ‘regular order’ in Congress – the cumbersome steps designed to ensure that legislation gets discussed and examined, that all relevant information flows freely in the process, and that members have a chance to negotiate and compromise – all this developed because it is the best way for people from different regions who hold different beliefs to be part of governing.”<sup>1</sup>

In a report released in 2006, the non-partisan Reform Institute said, “Needed changes include restoring transparency and accountability to the legislative process, imposing a waiting period on bills reported to the floor so that members have time to read them before voting, allowing the minority party to introduce amendments, and opening the doors to the minority in conference committees that are currently a closed-door process.” The Institute is a non-profit initially chaired by Sen. John McCain (R-Ariz.) and former Sen. Bob Kerrey (D-Neb.) that promotes “an open, healthy democracy.”<sup>2</sup>

In a dozen years of Republican control of Capitol Hill, the Republican leaders upended “regular order” when it suited them – sneaking provisions into bills at the last minute to create a *fait accompli*, excluding Democrats from conference committee meetings and holding roll call votes open beyond the allotted 15 minutes when they needed to twist arms to get a bill or amendment adopted.

The House has begun to address some of these problems in H. Res. 6, the new rules package adopted by a vote of 430 to 1. The new House rules prohibit the practice of arm-twisting by holding votes open, improve the openness and accountability of conference committee practices, and require conferees to approve the final version of bills. The Senate is considering a bill that would require conference reports to be available at least 48 hours in advance of a vote. The Senate should look closely at the full package of reforms developed in the House and adapt them for the Senate to improve the conference committee process. Both parties, and all conferees, should have a fair opportunity to be involved and to vote on any changes to the conference reports or final bill.

- Broaden and extend restrictions on government employees passing through the revolving door to K Street lobbying positions.

The ultra-deepwater provision was ushered into law with the help of two lobbyists who moved quickly from the federal government to K Street:

- Melanie Kenderdine moved almost immediately from her position as a top aide to former Energy Secretary Bill Richardson to her post as the chief lobbyist for GTI. GTI, in turn, funded and spearheaded the push for the ultra-deepwater provision. Kenderdine had previously worked as a congressional staffer for Richardson.
- Drew Maloney was an energy specialist on DeLay's staff before leaving in 2002 for K Street. Maloney soon began lobbying for the ultra-deepwater provision – and no doubt benefited from his ties to DeLay and his staff. As House Majority Leader in 2005, it was DeLay who ensured that \$50 million of the ultra-deepwater provision would be guaranteed annually, requiring no additional congressional action. Maloney's lobbying firm received more than \$400,000 from a variety of sources to press for the ultra-deepwater provision.

The rules on government employees who go to work for lobbying firms should be broadened in three ways:

- The time period restricting former government officials from lobbying should be extended from one year to two years.
- This waiting period, often called a “cooling off” period, should be broadened so that it prohibits former government employees from lobbying any federal employees – not just their former colleagues – for the duration of the period. For example, recently departed Energy Department officials currently are free to lobby everyone but those who work in their specific enclave of the Energy Department. They face no restrictions on lobbying those in other executive branch agencies or anyone in Congress. Likewise, former congressional staffers are only prohibited from lobbying the offices of the member or committee for which they worked, but remain free to lobby the rest of Congress as well as the entire executive branch. This rule is far too permissive.
- Waiting period restrictions should be extended to cover all lobbying activities, not just “lobbying contacts.” While the current law prohibits certain ex-government employees from *contacting* certain current employees, it does nothing to restrict former government employees from engaging in other lobbying activities, such as supervising other lobbyists, arranging for other lobbyists to make lobbying contacts, or preparing lobbying materials. The coziness of Washington's culture leaves the line between “lobbying contacts” and other lobbying activities far too fuzzy, rendering this clause almost unenforceable. The law should dictate that no former government employee may work as a lobbyist in any fashion for two years.

- Increase disclosure of earmarks.

Although the ultra-deepwater provision called for an “open, competitive process” to select a consortium to manage the program, the Research Partnership to Secure Energy for America (RPSEA) was clearly the intended beneficiary. To spotlight legislative actions that target benefits to specific organizations or narrow classes of recipients, generally known as “earmarks,” Congress should take at least three steps:

- Require disclosure of the members of Congress who sponsor earmarks before they can be voted upon. The newly inaugurated House of Representatives has instituted a similar rule for the 110th Congress. Congress should pass a law, which would add a greater measure of permanence to the rule and apply to both House and Senate.
- The law should require lobbyists to disclose and describe all earmarks they are seeking. These disclosures should be made electronically, in intervals of no more than 30 days, and should be posted to the Internet instantly. Such a requirement would give both the public and lawmakers a chance to learn of such proposals and debate their merits before they are enshrined in law.
- The definition of “earmark” should be broadened. The new House rules define an earmark as a “contract, loan, loan guarantee, grant, loan authority, or other expenditure with or to an entity, or targeted to a specific State, locality or congressional district, other than through a statutory or administrative formula-driven or competitive award process.”

The ultra-deepwater provision illustrates the shortcoming of this definition. The measure officially called for the money it authorized to be awarded in an “open, competitive process.” As this report demonstrates, the provision was rigged so that a specific entity – RPSEA – would almost certainly win the contract to manage the money. It was a sham competition, at best.

As a specific remedy for this issue, Congress should stipulate that a competitive award does not necessarily exempt a measure from being defined as an earmark. If need be, the Senate and House ethics committees should issue interpretive guidelines defining what constitutes actual, rather than sham, competitions in the context of earmarks.

The definition of an earmark should specify that the term includes all measures that are targeted for specific individuals, organizations, municipalities or other narrow classes of recipients.



- Institute a voluntary system to publicly fund congressional campaigns to break the nexus between campaign money and legislation.

The ringleaders of the effort to insert the ultra-deepwater provision into the final energy bill were heavily financed by companies that now are part of RPSEA's membership. The time has come to offer lawmakers an opportunity to do their jobs without having to worry about the fundraising implications of decisions. A public funding system for congressional elections would do just that.

Evidence strongly suggests that a public funding system would pay for itself many times over by preventing boondoggles, like the one described in this report, that flow from the current system, which all too often awards taxpayer-financed spoils to large contributors. Full public funding for congressional elections would cost about \$1.3 billion per two-year election cycle. The ultra-deepwater provision, just one small part of a single bill, will cost \$1.5 billion if it is fully funded, more than the amount of money required to provide full public funding for all members of Congress for a full election cycle.

## Millions in Welfare for Companies with Billions in Profits

The Energy Policy Act of 2005 includes a provision that requires the federal government to spend at least \$500 million, and up to \$1.5 billion, over 10 years for research into “ultra-deepwater” oil and gas exploration and other unconventional exploration. Of the money authorized, 75 percent is to be administered by a consortium. In May 2006, the DOE selected the Research Partnership to Secure Energy for America (RPSEA), the lone applicant, as the winning consortium. A \$375 million contract was signed on Dec. 29, 2006.<sup>3</sup>

RPSEA has more than 90 members including research universities, national laboratories, privately owned energy firms and publicly traded energy giants. The 17 publicly traded companies, including the likes of BP, Anadarko, ConocoPhillips and Halliburton, had a combined net income of \$100 billion in 2005, alone. [See Figure 1] Their combined income is so enormous that the program could be fully funded *for all ten years* if they merely set aside 1.5 percent of their 2005 profits. A single year’s funding could be paid for if those firms set aside less than two-tenths of one percent (0.15 percent) of their 2005 profits.

**Figure 1: RPSEA Members’ Net Income, 2004 and 2005**  
(in millions of dollars)

| Member                               | 2005 Net Income  | 2004 Net Income |
|--------------------------------------|------------------|-----------------|
| Anadarko                             | \$2,466          | \$1,601         |
| Apache Corp.                         | \$2,618          | \$1,663         |
| Bill Barrett Corp.                   | \$24             | (\$5)           |
| BP PLC                               | \$22,341         | \$17,075        |
| Chesapeake Energy (pending member)   | \$880            | \$439           |
| Chevron Corp.                        | \$14,099         | \$13,328        |
| ConocoPhillips                       | \$13,529         | \$8,129         |
| Devon Energy Corp.                   | \$2,920          | \$2,176         |
| GE Oil & Gas (Figures for all of GE) | \$16,353         | \$16,819        |
| Halliburton Energy                   | \$2,358          | (\$979)         |
| Marathon Oil Company                 | \$3,032          | \$1,261         |
| Noble Drilling                       | \$297            | \$146           |
| Schlumberger                         | \$2,207          | \$1,224         |
| Technip                              | \$123            | \$148           |
| Total SA                             | \$16,300         | \$14,374        |
| Weatherford                          | \$462            | \$337           |
| Williams                             | \$314            | \$164           |
| <b>TOTAL</b>                         | <b>\$100,323</b> | <b>\$77,900</b> |

Despite this, the industry has repeatedly pleaded that it needs the government to foot the bill for investment in new technology.

Melanie Kenderdine, a vice president of the Gas Technology Institute, who runs its Washington office, and was the chief lobbyist behind the effort to secure federal funds for ultra-deepwater research, portrayed the energy industry as virtually poverty stricken in a 2001 article:

“Brutal cost-cutting and research divestment by the producing companies along with service company mergers have led to a concentration of technology expertise in the hands of a few integrated service companies,” the article said. “But with an average return-on-investment (ROI) of 5.36 percent, the service sector cannot afford to foot the bill for the entire technology investment needed.”<sup>4</sup>

In 2006, despite years of record energy industry profits, Kenderdine remained steadfast in her assertion that the taxpayers should pay for research into ultra-deepwater exploration and other unproven methods of exploration, saying the energy companies will not do it.

“I know they don’t make decisions based on the public interest. Shareholders won’t let them,” Kenderdine told Public Citizen. “What are we to do? Cede the public interest to them?”<sup>5</sup>

She added, “They are going to make decisions to develop at the least cost to maximize the value of their reserves.”<sup>6</sup>

Kenderdine portrayed ExxonMobil, the world’s largest energy company, as a giant that lords over the less powerful companies that make up RPSEA’s membership. “I wouldn’t want to put the public’s energy future in the hands of Exxon,” Kenderdine said. “They don’t like RPSEA. They own the playing field. This levels the playing field.”<sup>7</sup>

But Kenderdine’s portrayal of RPSEA’s members as relative weaklings in need of government protection is spurious. Just three of its members – BP, Chevron and Total SA – posted profits totaling \$52.7 billion in 2005.

Even President Bush, who is typically viewed as a promoter of the oil and gas industry, criticized the federal subsidy. The day before the House vote on the energy bill, President Bush suggested that the energy industry could well afford to use its own money for the research.

“With oil at more than \$50 a barrel, by the way, energy companies do not need taxpayers’-funded incentives to explore for oil and gas,” Bush said.<sup>8</sup>

The administration followed up by refusing to include money for the consortium in the budget for the fiscal year that began Oct. 1, 2006, although Kenderdine expects the \$50 million from the trust fund to be available. And the administration has asked Congress to repeal the section of the 2005 energy act under which RPSEA was chosen.<sup>9</sup>

Although the 2005 energy act authorized an appropriation of an additional \$100 million per year for the program, the chances that the money will materialize this fiscal year came into

question when the 109th Congress adjourned without appropriating the funds and the new Democratic majority decided to operate the government on continuing resolutions for the remainder of the fiscal year.

## Provision Replaced Lost Funding with Taxpayer Subsidy

The provision allowing RPSEA to receive an annual allotment of taxpayer funds was the fruit of a lengthy and calculated campaign by a non-profit group that historically had performed and managed research for the natural gas industry.

For years, GRI received most of its money from a federally approved surcharge that gas pipeline operators collected from their customers.<sup>10</sup> The Federal Energy Regulatory Commission (FERC) set the amount that GRI received each year. Funding peaked at \$210.4 million in 1995.<sup>11</sup>

Then the group faced a crisis. As pipeline operators lost their monopolies to deregulation and had to compete and closely watch their bottom lines, they objected to financing research that did not benefit them solely. “If they’re going to spend millions on GRI, then they want something no one else has,” *Pipe Line & Gas Industry* wrote in 1998.<sup>12</sup>

FERC negotiated a settlement between GRI and the pipeline operators in 1998. It called for a seven-year phase-out of the subsidy, which fell from \$164 million in 1998 to \$60 million in 2004, its last year.<sup>13</sup>

In 2000, as the end of the Clinton administration drew near, GRI turned to Melanie Kenderdine, a senior official in the Department of Energy (DOE). The group proposed replacing the pipeline operators’ funding stream with a taxpayer-funded subsidy.

“The GRI board had endorsed trying to get a \$150 million trust fund for R&D funded with royalties” that the government collects from oil and gas companies, Kenderdine said in an interview with Public Citizen.<sup>14</sup> She recalls telling the organization “how incredibly difficult” it would be.

“The first thing I told them was that there can’t be \$150 million for GRI. That can’t work,” Kenderdine said.<sup>15</sup>

The group’s plea was not fulfilled, but it was not forgotten.

In 2001, the group, which had changed its name to the Gas Technology Institute (GTI), hired Kenderdine as its chief lobbyist and put her to work to convince Congress to establish a dedicated taxpayer subsidy for natural gas research.

By May 2001, GTI’s then-president John Riordan was publicly promoting the funding scenario that GRI had proposed to Kenderdine when she was at the DOE. Riordan suggested that \$150 million in annual royalty payments from gas producers who use public lands and coastal waters be earmarked for GTI and other research entities.<sup>16</sup>

Gas industry officials liked Riordan's idea – as long as it didn't mean their royalties would go up, *Crain's Chicago Business* reported in 2001.<sup>17</sup> “In effect, the proposal would shift the cost of research from the industry to the government,” the Chicago publication said.<sup>18</sup>

“It is true that there were some people at GTI who thought I could magically get \$150 million per year for GTI,” Kenderdine recalled. “I disavowed them of that notion right after I started in 2001 and set about to pursue legislation that I believe to be consistent with GTI's overall mission to serve the interests of the natural gas consumer.”<sup>19</sup>

All the same, the money for GTI was drying up. In 2004, with the FERC subsidy set to expire, GTI made a futile last-ditch attempt to salvage \$48 million a year, arguing that it was not bound by the 1998 settlement because it was not a successor organization to GRI, which had agreed to it.<sup>20</sup> FERC concluded that GTI was a successor to GRI and was bound by all of its obligations. The privately funded subsidy was dead.<sup>21</sup>

Meanwhile, GTI was taking strategic steps to secure a taxpayer-financed lifeline. In May 2002, the group announced that it had founded the Research Partnership to Secure Energy for America (RPSEA) in conjunction with the Texas A&M Engineering Experiment Station.<sup>22</sup>

The Experiment Station “brings to the partnership world-renowned scientists and industry-leading deepwater research capabilities,” the announcement said, “GTI, which brings with it a 25-year history of research and development management, will support an initial \$7 million of research to further the goals of the partnership.”<sup>23</sup>

“GTI is looking forward to building on our past successes in gas supply research,” Riordan said.<sup>24</sup>

After creating RPSEA, GTI set out to confer credibility upon the consortium. The organization set aside \$7 million – funds from the expiring FERC subsidy – for RPSEA to finance a research program and a fellowship program for students. RPSEA submitted a proposal to the Gas Research Institute, still apparently operating as a separate entity, for the funds. So, Kenderdine, as acting president of RPSEA, sent GRI, her employer, a detailed proposal for “Technology Development for Unconventional and Ultra Deep Offshore Natural Gas Resources.” The proposal listed the RPSEA address as Kenderdine's office address in Washington, D.C.<sup>25</sup>

Kenderdine says RPSEA spent \$6 million of the GTI funds on research – money that GTI would have used to pay for research anyway.<sup>26</sup>

In effect, the creation of RPSEA and other GTI efforts amounted to a multi-million gamble to win congressional approval of a taxpayer subsidy for natural gas research and, in the process, rescue GTI.

The gamble paid off. But Kenderdine emphatically reject the view that newly dedicated funds would serve as a replacement to GTI for its lost FERC money. “Any implication that GTI

has replaced the \$200 million [FERC-approved] surcharge with RPSEA administration funds is ludicrous, as well as false,” Kenderdine said.<sup>27</sup>

Nonetheless, GTI will receive an annual million-dollar management fee for overseeing an element of RPSEA’s program and will be eligible to apply for multi-million dollar research grants as a member of the consortium.

Aside from GTI’s funding of RPSEA and Kenderdine’s service as an acting president of RPSEA, there are abundant other indicators that show how close the organizations are:

- A second GTI official, Robert W. Siegfried, served as RPSEA’s acting president after a previous president left because, according to Siegfried, RPSEA “didn’t have sufficient funds to carry a staff.”<sup>28</sup> Siegfried is also listed as RPSEA’s vice president for unconventional gas technology.<sup>29</sup>
- RPSEA’s books were kept at GTI’s Illinois headquarters in Siegfried’s care, according to the organization’s Form 990 filing with the IRS, for fiscal years 2004 and 2005.
- Kenderdine is listed in filings with the IRS as RPSEA’s secretary and is described on the organization’s Web site as its “founder.”<sup>30</sup> She spoke at a press conference in RPSEA’s Sugar Land offices on Jan. 6 when Rep. Nick Lampson (D-Texas), who won DeLay’s seat in 2006, announced the signing of the contract. She claimed Lampson, then running for his seat, was key to turning back a Democratic effort to kill the legislation in May 2006.<sup>31</sup>
- GTI reports having an office in Sugar Land, Texas, in the same suite in which RPSEA is headquartered.<sup>32</sup>
- After Congress approved the pot of research money to be allocated to a consortium, GTI helped to prepare RPSEA’s application to win the DOE contract.<sup>33</sup>

## Congressional Leaders Used Sleight-of-Hand to Create Subsidy

The subsidy in the Energy Policy Act of 2005 that will provide hundreds of millions of dollars to RPSEA was secured only through legislative sleight-of-hand, after efforts going back to 2001 had failed.

The ultra-deepwater drilling research measure was included in the House version of the energy bill when it passed on April 21, 2005, by a vote of 249-183. It provided for ultra-deepwater research to be funded with “excess” oil and gas royalty revenue of up to \$200 million a year.

The bill went to the Senate, which deleted the ultra-deepwater proposal and made other changes, then passed its version of the energy bill by an overwhelming 85-12 vote.

The bill then moved to a conference committee, where conferees were to resolve the differences between the House and Senate versions. They completed work early in the morning of July 26, 2005. The ultra-deepwater research provision was not in the bill.

At 4 a.m. on July 26, Rep. Henry Waxman (D-Calif.) and other Democratic negotiators went home believing that a deal had been finalized and that the ultra-deepwater research provision was not included. Indeed, a draft of the bill was printed and didn't include the provision. But, according to Waxman, subsequent to the departure of rank-and-file members of the committee, the four leading conferees – two Democrats and two Republicans – slipped the ultra-deepwater research provision into the bill.<sup>34</sup> Salon.com quoted a Democratic aide as saying that the research consortium measure appeared in the bill sometime between 3 a.m. and noon on July 26, 2005.<sup>35</sup>

Waxman complained bitterly to House Speaker Dennis Hastert. In a July 27, 2005, letter to Hastert, Waxman said that “a \$1.5 billion giveaway to the oil industry, Halliburton [a RPSEA member], and Sugar Land, Texas...was inserted into the energy legislation after the conference was closed so members of the conference committee had no opportunity to reject this measure.”<sup>36</sup>

Saying that the measure is “on the merits...indefensible,” Waxman wrote that “it would be a serious abuse to secretly slip such a costly and controversial provision into the energy legislation.”

Waxman wrote a second letter to Hastert the next day, saying he had learned that the measure was slipped into the bill in a bipartisan act by the senior Republican and Democrat on each of the congressional energy committees – Sens. Pete Domenici (R-N.M.) and Jeff Bingaman (D-N.M.) and Reps. Joe Barton (R-Texas) and John Dingell (D-Mich.).<sup>37</sup>

In his second letter to Hastert, Waxman softened his tone about the post-conference inclusion in the bill, saying, “This provision was not brought before the conference committee



for a vote because the language of the provision was not finalized for circulation before the last meeting of the conferees.”<sup>38</sup>

But he did not soften his position, declaring, “Congress should not provide oil and gas companies with this egregious and unnecessary \$1.5 billion subsidy....”<sup>39</sup>

Even though his boss had a hand in the deed, a Bingaman spokesman blamed DeLay. “This is something that Mr. DeLay obviously has been interested in for a while,” Bill Wicker, a Bingaman spokesman, told Salon. “He has done a pretty effective job of keeping his fingerprints off of things.”<sup>40</sup>

Kenderdine, on the other hand, sought to downplay DeLay’s involvement. But, in doing so, she highlighted his crucial role.

“Tom DeLay had nothing to do with this other than getting the trust fund established,” Kenderdine said, referring to the provision that sets aside \$500 million over ten years.<sup>41</sup>

Asked if the trust fund is important, she said, “The trust fund was always in the legislation. There are trust funds that are subject to annual appropriation and there are trust funds that are not subject to appropriation. He was helpful in not getting it subject to appropriation. There are good reasons for doing that.”<sup>42</sup>

She said multi-year guaranteed funding is important because “it is hard to do research on annual appropriations.”<sup>43</sup>

DeLay’s former aide, Drew Maloney, who departed the Hill in 2002 for K Street, had been hired to lobby on the issue. In 2003, his firm, the Federalist Group, was hired by Morgan Meguire, which was being paid by GTI to lobby. Morgan Meguire paid Maloney’s firm \$210,000. Morgan Meguire collected \$820,000 from GTI to lobby on the issue. In 2005, GTI began paying the Federalist Group directly. It paid the firm \$180,000 through 2005.<sup>44</sup>

RPSEA’s headquarters was also located in DeLay’s hometown, Sugar Land, Texas. In an interview, Kenderdine asserted that the specific location – at the Texas Energy Center – was chosen because the center offered two years’ free rent. GTI also has an office at the Texas Energy Center, a creation of Texas Gov. Rick Perry that was set up as a job-creation engine but has had a difficult time getting off the ground.<sup>45</sup>

The former director of the Texas Energy Center suggested it was a very savvy move. According to *The Houston Chronicle*, minutes of an April 2004 meeting of the Texas Energy Center showed that Ron Oligney, its former director, believed that TEC “was the reason Tom DeLay had personally put his shoulder behind the ultradeep-water title in the energy bill.”<sup>46</sup> In 2004, DeLay testified before the House Energy and Commerce subcommittee headed by Rep. Ralph Hall (R-Texas), the original sponsor, in support of ultra-deepwater research.<sup>47</sup>

The Texas Energy Center hired Maloney to lobby on the issue.<sup>48</sup> In addition to collecting nearly \$400,000 from GTI and a lobbying firm hired by GTI, Maloney’s firm also collected

\$20,000 from the Texas Energy Center for lobbying on this issue in 2004.<sup>49</sup> Maloney was also paid \$140,000 by the Texas Office of State-Federal Relations to lobby on the energy act, including “research and development energy provisions.”<sup>50</sup>

Kenderdine said senior lawmakers intended all along to include the research consortium provision. “There was a place-holder for this” in the version of the bill that was considered by the conference committee, she said in an interview. “The dispute was over the amount.”<sup>51</sup> In the end, the funding was reduced from “up to” \$200 million a year from royalty revenues that the House had approved to \$50 million in royalties and another \$100 million, provided Congress appropriates the money annually.

Whether there was bipartisan agreement, inserting a major provision like this 30-page measure into a bill after House and Senate conferees had completed work on the legislation was an abuse of power.

The day after the conference committee wound up its work, Kenderdine was relieved. “I think it’s a great program and I think it’s good for natural gas producers,” she said.<sup>52</sup>

“How the sausage is made is not important to me,” she told the Associated Press.<sup>53</sup>

## The Subsidy Provision Was Rigged for RPSEA

The Energy Policy Act of 2005 called for an “open, competitive process” for the selection of a consortium to manage an annual allotment of up to \$112.5 million annually in federal funds for research into ultra-deepwater oil and gas drilling. Of that amount, \$37.5 million would go automatically to the consortium from a trust fund financed by oil and gas royalty revenues. The other \$75 million would go to the consortium only if appropriated by Congress. In addition, \$12.5 million from the trust fund, and up to \$25 million in appropriated funds, would go to the National Energy Technology Laboratory, a DOE agency, for research on the same issues. If it is fully funded, the 10-year program will cost \$1.5 billion.

The allowance for competition was key. Kenderdine had long ago realized that any approval of dedicated federal funds for natural gas research would likely depend on lawmakers’ belief that various entities would have a real opportunity to vie for the money.

But the ultra-deepwater research provision contained requirements that undercut its own call for competition. The law set a tight application schedule which gave RPSEA a leg-up.

It required DOE to solicit proposals from “eligible consortia” within 90 days of enactment of the law; required submission of proposals within 180 days of enactment; and required selection of the winner within 270 days of enactment.

The law requires that each applicant “must be an entity whose members have collectively demonstrated capabilities and experience in planning and managing research, development, demonstration, and commercial application programs for ultra-deepwater and unconventional natural gas or other petroleum exploration or production.”<sup>54</sup>

Kenderdine, claiming that newly formed consortia would have been eligible, focused on the word “collectively,” saying, “We have always assumed this to mean the demonstrated research capabilities that is a ‘collection of individual capabilities of members of the consortium’ as opposed to a group that had jointly demonstrated that research management capability. In other words, individual organizational capability of each entity, combined together, would count collectively.”<sup>55</sup>

However, the DOE’s subsequent request for proposals suggested otherwise. It said that the applications of “offerors” “shall address” their “prior experience in soliciting, awarding and managing small and large research projects and experience in managing, administering and integrating a program with multiple diverse research areas.”<sup>56</sup> The word “collectively” is not included.

RPSEA, with its record of financing and managing research contracts, was custom tailored to meet the DOE’s requirements. In other words, the bill and the DOE’s solicitation appear to both be rigged for RPSEA.

President Bush signed the Energy Policy Act of 2005 on August 8.<sup>57</sup> GTI and others involved with RPSEA got to work on its application for the award. They submitted the application in February 2006, after DOE extended the deadline for nearly a month.<sup>58</sup> Kenderdine said RPSEA did not request the delay.

In an interview with Public Citizen, Kenderdine and C. Kyle Simpson, a lobbyist retained by GTI, acknowledged that the bill's timeline gave RPSEA a big advantage because would-be competitors did not have enough time to put together an application.

But RPSEA did not rest on its laurels. When the group's members heard of potential competitors, they approached their would-be foes and asked them to join RPSEA. "In 90 percent of the cases, they did," Simpson said.

Simpson contends that competition was in the offing, nevertheless. "We heard there were very aggressive efforts to put a consortium together. We were told there was going to be competition," he said.<sup>59</sup>

He and Kenderdine argued that others could have done what GTI did – put together a consortium when the first version of this legislation surfaced in 2001. "We have always assumed that anyone who was paying attention and wanted to form up a consortium could have done so as the basic structure and features of the managing consortium have not altered since the original legislation," Kenderdine said in an e-mail to Public Citizen.<sup>60</sup>

A spokesman for DeLay, Dan Allen, also asserted that the award would be competitive. "All companies will have the opportunity to compete," he said in 2005. "The secretary of energy will make the final decision."<sup>61</sup>

But this competition never materialized. In response to a Freedom of Information Act request from Public Citizen, the DOE provided a copy of the "selection statement" for the award, which said that RPSEA submitted the only proposal.<sup>62</sup>

The GTI announced RPSEA's selection in May 2006.<sup>63</sup>

Also in May, DOE notified Congress that the consortium was chosen to negotiate a contract. Congress was told that the cost of the contract was to be determined. The request for proposals said the contract could be worth as much as \$1.1 billion.<sup>64</sup>

The contract was signed for \$375 million on Dec. 29, 2006.<sup>65</sup> GTI will continue to play a key role, according to Kenderdine, having signed a \$1 million per year contract with RPSEA to manage the part of the research effort devoted to on-shore recovery of natural gas.<sup>66</sup>

The law specifically allows members of the consortium, including GTI, to receive research awards as long as conflict of interest provisions are met.

In GTI's case, Kenderdine said, "we added an additional hurdle in the proposal...that would require permission of DOE for GTI to compete for any research projects in addition to

complying with the rigorous [conflict of interest] policy for all other members of the consortium.”<sup>67</sup> Kenderdine called the conflict-of-interest policies “strict” and “rigorous.”

The legislation’s conflict-of-interest provision requires board members, officers and employees who are decision-makers to disclose conflicts-of-interest and to recuse themselves in such cases.<sup>iii</sup>

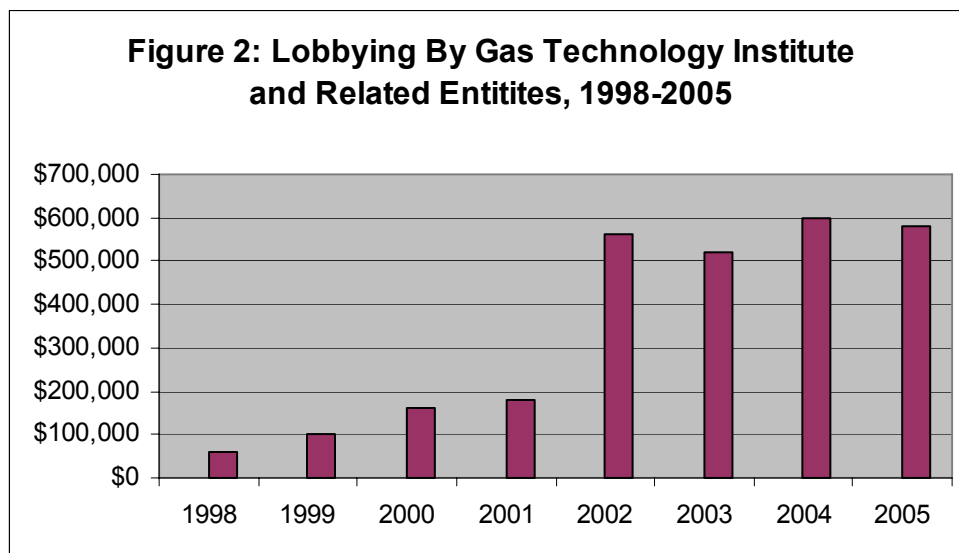
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<sup>iii</sup> They must disclose “any financial interests in, or financial relationships with applicants for or recipients of awards...including those of his or her spouse or minor child, unless such relationships or interests would be considered to be remote or inconsequential.” There appear to be some loopholes. There is nothing in the law that requires recusal in cases where a decision-maker’s parents, adult children, siblings, in-laws or other relatives are connected to an award recipient. And, the law says that financial relationships do not have to be disclosed if “such relationships or interests would be considered to be remote or inconsequential.”

## RPSEA Relied on Multi-Million Dollar Lobbying Effort, Including Lobbyists from Influential Congressional and Executive Branch Jobs

The Gas Technology Institute's strategy for securing a taxpayer subsidy to replace its lost revenue stream relied on major increases in its lobbying budget.

Between 1998, the earliest year for which federal lobbying disclosure records are available online, and 2005, the combined lobbying budgets of the Gas Research Institute and the Gas Technology Institute rose from \$60,000 annually to as high as \$600,000 in 2004. Between 2002 and 2005, the group spent more than \$2.2 million on lobbying on all issues.<sup>iv</sup> [See Figure 2]. In reference to lobbying focused specifically on pursuit of the ultra-deepwater legislation, the organization "spent a little less than \$2 million on lobbying on this issue over five years or roughly \$400,000/year," Kenderdine said in an e-mail.<sup>68</sup>



Source: Lobbying disclosure records filed with the Secretary of the Senate and the Clerk of the House.

Semi-annual lobbying reports include only one bottom line spending figure for all issues lobbied upon in the period. The vast majority of issues upon which the Gas Technology Institute, its related entities, and firms that it hired reported lobbying related to pursuit of a federal research and development funds, with one apparent exception. In the years 2002 to 2004, GTI paid a firm an average of \$113,000 a year to lobby on defense issues.

<sup>iv</sup> The Gas Research Institute (GRI) and the Institute of Gas Technology announced that they had merged in 2000, after which the combined group was called the Gas Technology Institute (GTI). Although GRI and the Institute of Gas Technology ceased to exist as publicly known entities, these corporate entities continued to file annual Form 990 tax returns with the IRS. The successor organization, GTI, does not file 990s, according to GuideStar.org, an organization that posts 990 forms on the Internet. But GTI, as well as GRI, file lobbying disclosure forms with the Secretary of the Senate. The Institute of Gas Technology ceased its lobbying filings in 2001.

The Gas Technology Institute’s lobbying effort relied on influence peddlers who previously held key executive branch positions or congressional staff jobs

Two former Department of Energy officials and a departed aide to former House Majority Leader Tom DeLay (R-Texas) were the key players:

- **Melanie Kenderdine**

Kenderdine has made all the important stops in preparation for a career as a Washington influence peddler – serving in high-ranking congressional staff positions and senior executive branch positions.

A native of New Mexico, she worked on Capitol Hill as legislative director and chief of staff to Rep. Bill Richardson (D-N.M), who is now New Mexico’s governor. She also served on the staff of the House Energy and Commerce Committee, where, according to a biography, “she worked on legislation to deregulate the natural gas industry, reauthorize Superfund, repeal the Fuel Use Act, amend the Clean Air Act, and many other energy/environment initiatives.”

Kenderdine held several senior positions at the Department of Energy between 1993 and 2001, including serving as chief policy advisor to Richardson, her Capitol Hill mentor, after he became secretary of energy.<sup>69</sup>

She joined GTI in March 2001.

At the turn of the millennium, while she was still at DOE, Kenderdine was approached by officials from GRI.<sup>v</sup> They had a serious problem: They were facing the certain loss of a large revenue stream from natural gas pipeline operators that financed much of their research and development (R&D) work. The subsidy had once topped \$200 million annually.

“They said the GRI board had endorsed trying to get a \$150 million trust fund for R&D funded with royalties” that the government collects from oil and gas companies, Kenderdine said in an interview.<sup>70</sup> She recalls telling the organization “how incredibly difficult” it would be. “The first thing I told them was that there can’t be \$150 million for GRI. That can’t work.”<sup>71</sup>

She said later, “Any program like that, to be successful, would have to be a competitive program.”<sup>72</sup>

Within two months after leaving government, Kenderdine signed on with GTI to serve as its Washington vice president.

Between 2001 and 2005, Kenderdine oversaw a \$2 million lobbying campaign. Perhaps most important, she coordinated a strategy that resulted in congressional approval of a

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<sup>v</sup> The group changed its name to the Gas Technology Institute in 2000.

subsidy of up to \$150 million annually for research into ultra-deepwater natural gas exploration and other unconventional forms of exploration. The end result was eerily similar to the proposal that the GTI's predecessor organization had suggested to Kenderdine when she worked in the DOE.

Along the way, Kenderdine played a key role in creating the Research Partnership to Secure Energy for America (RPSEA). The idea dovetailed with her initial suggestion to lobby Congress for money to be awarded through a competitive process. The legislation that Congress approved did, in fact, call for such a process, but the provision was so narrowly tailored that only RPSEA was likely to emerge victorious. In the end, RPSEA was the only applicant and was selected.

Kenderdine claims much of the credit, saying in her official biography that she "is the principal architect of the Ultra-deepwater and Unconventional Natural Gas Supply Research and Development Program, a \$500 million R&D trust fund included in the Energy Policy Act of 2005 and a co-founder of the Research Partnership to Secure Energy for America, a non-profit research management institution."<sup>73</sup>

- **C. Kyle Simpson**

Around the time that GRI was going hat-in-hand to Kenderdine at the Energy Department, Texas A&M University's Engineering Experiment Station retained lobbyist C. Kyle Simpson, who had held several DOE positions, including senior policy advisor to Federico Pena, Clinton's first energy secretary.<sup>74</sup> The organization was looking for research work for its wave basin – a 150-foot by 100-foot tank that can simulate deepwater conditions. The group markets the tank for research "to help U.S. oil producers reach new depths in the Gulf of Mexico's deepwater frontier."<sup>75</sup>

After five years at DOE, Simpson had left in 1997 and opened his own lobbying firm, Morgan Meguire.<sup>76</sup> Texas A&M paid the firm \$280,000 over two-and-a-half years to seek "potential federal funding sources for deep water natural gas technology research program."<sup>77</sup>

One of Simpson's targets was Vice President Dick Cheney's energy task force, according to documents and e-mails released in response to Freedom of Information Act requests.<sup>78</sup>

In an e-mail and attachment addressed to Joseph Kelliher, a key figure on the Cheney energy task force and senior policy advisor to former Energy Secretary Spencer Abraham, Simpson proposed "an accelerated cooperative program of research and development to develop natural gas and oil reserves in the ultra-deepwater of the central and Western Gulf of Mexico. The research and development program shall include close cooperation with consortia of industries, educational institutions, national laboratories and others."<sup>79</sup>

He included a draft of legislation that authorized the expenditure of \$2 billion over an eight-year period.<sup>80</sup>



The Cheney task force did not adopt Simpson's proposal, but its report included language that gas producers may have found encouraging.

"The most significant long-term challenge relating to natural gas is whether adequate supplies can be provided to meet sharply increased projected demand at reasonable prices," the May 2001 report said.<sup>81</sup>

"Increasingly," it added in another section, "the nation will have to rely on natural gas from unconventional resources, such as tight sands, deep formations, deep water, and gas hydrates."<sup>82</sup>

The report recommended that the president order "a review of current funding and historic performance of energy efficiency research and development programs" followed by an administration proposal for "appropriate funding of those research and development programs that are performance-based and are modeled as public-private partnerships."<sup>83</sup>

At some point, as they were seeking money for their clients, Kenderdine and Simpson compared notes and realized they were working on similar quests for federal research dollars — Kenderdine pitching an on-shore program while Simpson sought deepwater research funds. So they decided to combine their effort.<sup>84</sup>

"She was working on-shore," Simpson said. "I was doing deepwater. We decided to put them together."<sup>85</sup> They began to seek research dollars for what is now called a program of "research, development, demonstration, and commercial application of technologies for ultra-deepwater and unconventional natural gas and other petroleum resource exploration and production."<sup>86</sup>

In 2001, GTI hired Simpson's firm, Morgan Meguire. Its assignment: "Advocacy of federal programs to provide investment for ultra-deepwater natural gas exploration and production."<sup>87</sup> GTI paid the firm more than \$800,000 through the end of 2005, when Simpson switched to another firm and took the GTI business with him.<sup>88</sup>

Kenderdine and Simpson were given an insiders' role – they helped congressional staff write the legislation.

"I ran into someone with Ralph Hall," Kenderdine recalled, referring to a Rep. Ralph M. Hall, a Texas Democrat first elected in 1980, who switched to the Republican Party in 2004.

"He said [Hall] wanted to do ultra-deep. I told him we were interested in unconventional onshore. He wanted a bill." So, she said, she and Simpson worked with Hall's staff to craft the legislation.<sup>89</sup> Hall's bill was first dropped into the hopper in 2001.

The legislation "was essentially unchanged" four years later when it was approved as part

of the 2005 energy act. In addition to the Hall bill, several others with only ultra-deepwater provisions in them were introduced in 2001.

- **Drew Maloney**

Maloney was legislative director for former Rep. Tom DeLay (R-Texas) when DeLay was House majority whip. Energy issues were among his responsibilities.<sup>90</sup> In March 2002, with DeLay on the verge of rising to House Majority Leader, Maloney moved from Capitol Hill to K Street, where he joined a well-connected firm, the Federalist Group, and began lobbying on the energy legislation.

The Federalist Group received \$390,000 between 2003 and 2005 to lobby for federal research money for ultra-deepwater and unconventional onshore oil and gas exploration. About half the money came directly from the Gas Technology Institute. And, in an unusual K Street twist, about half the money came through Morgan Meguire, the Simpson lobbying firm that the Gas Technology Institute was paying to lobby on this issue.<sup>91</sup> The Texas Office of Federal State Relations paid the firm another \$200,000 to lobby on a variety of issues including the energy bill itself and research and development issues in the bill, while the Texas Energy Center chipped in another \$20,000 to press the issue.<sup>92</sup>

In 2002, shortly after leaving DeLay's staff, Maloney was embroiled in a "pay to play" scandal involving DeLay's state political action committee, Texans for a Republican Majority, known as TRMPAC. Maloney organized a high-priced golf outing at The Homestead, in West Virginia, for DeLay and a few energy industry executives. One of the participants was Westar Energy of Kansas, which subsequently claimed in court documents that it gave \$25,000 to TRMPAC so that two of its executives could participate in the outing.<sup>93</sup>

The lawyer for a Westar lobbyist, Richard Bornemann, told the House Ethics Committee that he initiated a conversation with Maloney about contributions and, based on that, decided to recommend to Westar that it give directly to TRMPAC because it could accept soft money.<sup>94</sup> In 2005, the Federal Election Commission fined Bornemann \$5,000 for improper fundraising activities.<sup>95</sup>

## Key Lawmakers Were Big Recipients of RPSEA Money

The key congressional figures in getting the research consortium into the 2005 energy bill have been treated well by the political action committees and executives of firms and organizations that are members of RPSEA.

RPSEA members contributed generously to former Rep. Tom DeLay (R-Texas), who was House Majority Leader when the ultra-deepwater provision was inserted into the bill. Melanie Kenderdine, the chief lobbyist for the provision, downplayed DeLay's role in securing the provision but acknowledged that DeLay made sure that \$50 million a year would be guaranteed, insulating the program from the whims of Congress's annual appropriations process.<sup>96</sup>

"The trust fund was always in the legislation. There are trust funds that are subject to annual appropriation and there are trust funds that are not subject to appropriation," Kenderdine said. "He was helpful in not getting it subject to appropriation. There are good reasons for doing that."<sup>97</sup>

DeLay ranked No. 6 among House members in contributions from RPSEA members from the 2000 election cycle to the 2004 election cycle.<sup>vi</sup> [See Figure 3]

**Figure 3: Contributions from RPSEA Members, 2000-2004 Election Cycles, to Former Rep. Tom DeLay (R-Texas)**

| Member                   | Amount Received from RPSEA Members | Rank Among House Members |
|--------------------------|------------------------------------|--------------------------|
| Rep. Tom DeLay (R-Texas) | \$91,300                           | 6                        |

Source: Center for Responsive Politics

Aside from DeLay's help, four leaders of the conference committee overseeing the 2005 energy bill played a vital role in winning passage of the research provision. These four leaders – two Republicans and two Democrats; two House members and two senators – were responsible for the 11th-hour maneuver to sneak the measure into the bill. They were:

- Rep. Joe Barton (R-Texas);
- Rep. John Dingell (D-Mich.);
- Sen. Pete Domenici (R-N.M.); and
- Sen. Jeff Bingaman (D-N.M.).

Sometime between 3 a.m. and noon on July 26, 2005, after the rank-and-file members of the conference committee had voted for what they believed to be the final energy bill, the provision calling for millions in subsidies for research into ultra-deepwater exploration and other unconventional exploration was inserted in the bill, a House aide told Salon.com.<sup>98</sup>

<sup>vi</sup> RPSEA members as of Nov. 9, 2006. Two publicly traded companies have since left the coalition while one has joined. Most members joined RPSEA after the provision for the ultra-deepwater research subsidy became law.

The provision had been part of the House passed energy bill, but was deleted from the bill when it went to the Senate. It had not been approved by the conference committee.

The four leaders of the conference committee received more than \$325,000 in political contributions from members of the RPSEA coalition between the 2000 and 2004 election cycles, placing them among the highest recipients of money from RPSEA members in their respective chambers. [See Figure 4] (Figures include contributions from some members of RPSEA before they joined the consortium.)

**Figure 4: Contributions from RPSEA Members, 2000-2004 Election Cycles, to 2005 Energy Bill Conference Committee Leaders**

| <b>Member</b>               | <b>Amount Received from RPSEA Members</b> | <b>Rank Among Members of House or Senate</b> |
|-----------------------------|---|--|
| Rep. Joe Barton (R-Texas)   | \$171,498                                 | 1  |
| Rep. John Dingell (D-Mich.) | \$44,516                                  | 35   |
| Sen. Pete Domenici (R-N.M.) | \$55,800                                  | 11   |
| Sen. Jeff Bingaman (D-N.M.) | \$54,666                                  | 13   |

Source: Center for Responsive Politics

## Other Favors and Earmarks for RPSEA

In addition to the GTI money, RPSEA got an \$800,000 earmark from Congress for the fiscal year that ended Sept. 30, 2005. Buried in a 1,645-page report on an omnibus spending bill passed in November 2004, the money was for “domestic fossil fuel research, including a thermoenergy integrated power system to achieve an advanced level of clean, economical power generation from coal, and other exploration and production technologies.”<sup>99</sup>

The earmark was shared with an Arkansas company called ThermoEnergy Corp.

In two interviews and e-mails, Kenderdine was vague about the earmark and seemed to want to distance GTI from it.

She said that RPSEA got \$350,000, which it used to do “a technical roadmap of the needs and requirements for gas onshore.” As for the rest, she said, “It wasn’t our deal; it was a member’s deal,” she said, referring to members of Congress. Speaking of RPSEA, Kenderdine continued, “We said, ‘If you want to, use it.’”<sup>100</sup>

In a later interview, she said, “That was a pass-through of money to the other organization.”<sup>101</sup> Then she said that, once the earmark had been finalized in the law, GTI had gotten DOE to separate out the ThermoEnergy funds so that GTI did not have to handle them.

She was still vague about the origin of the earmark.

“I think it was through the Texas Energy Center and some member – I don’t know which one, whoever cared for them,” she said.<sup>102</sup>

That was not the only federal money ThermoEnergy received. In February 2005, ThermoEnergy announced that it had sought and received three federal grants totaling \$2.3 million.<sup>103</sup>

ThermoEnergy is a small publicly traded company that appears to be on the ropes. In its annual report for 2005, filed with the Securities and Exchange Commission, the firm said its independent auditor reported that “there is a substantial doubt that the Company can continue as a going concern, primarily based on the lack of any significant revenue from operations, the company’s net losses since inception and the need for substantial capital to continue commercialization of the technologies.”<sup>104</sup>

The report said, “Since its inception, the company has generated negligible income from operations and has an accumulated deficit of approximately \$31 million as of December 31, 2005.”<sup>105</sup>

Indeed, the firm, founded in 1988, recorded its first revenue from operations, \$97,572, in the third quarter of 2005.<sup>106</sup>

The company has been traded on the over-the-counter market since 2000. Its stock price peaked in the \$9 range and has slid from about \$5 in mid-2002 to pennies, closing on Jan. 12, 2007 at 30 cents.<sup>107</sup>

In addition to the \$2.3 million earmark in 2004, ThermoEnergy announced in December 2006 that the Environmental Protection Agency had provided a \$1.5 million grant “through the Alaska Energy Authority” for the design, construction and operation of “the initial prototype” of a patented “ThermoEnergy Integrated Power System.” That plant, ThermoEnergy said, “will provide the process data the Company needs for the design and construction of a commercial scale multi-megawatt demonstration facility in 2009.”<sup>108</sup>

ThermoEnergy credited Sen. Ted Stevens (R-Alaska), a master of the congressional earmark mechanism, with “key support” for that project.<sup>109</sup>

## What's Next?

The Bush Administration continues to take a dim view of the research consortium, proposing to kill the research consortium legislation. Nevertheless, it chose RPSEA to conduct the program and signed a contract with the consortium for \$375 million.

In budget documents released in February 2006, the administration said that the research and development efforts, to be funded by \$50 million per year in oil and gas lease revenues, “are more appropriate for the private sector oil and gas industry to perform.”<sup>110</sup> An Office of Management and Budget document said, “Industry has the incentives and resources to do such R&D on its own.”<sup>111</sup>

In April, Secretary of Energy Samuel W. Bodman sent legislation to Capitol Hill that would repeal the section of the 2005 energy act that sets up the research consortium program. That bill has not been introduced. But seven bills that include repeal of the program were introduced. None has moved.

Moreover, an effort by Rep. Edward J. Markey (D-Mass.) to amend an appropriations bill to kill the provision failed in the House on May 24, 2006, by a margin of 255 to 161.

As the House and Senate examine oil and gas subsidies, we urge the Congress to investigate and repeal the program funding for RPSEA.

## Appendix I: What the Law Provides

The law:<sup>112</sup>

- Orders DOE to “carry out a program .....of research, development demonstration, and commercial application of technologies for ultra-deepwater and unconventional natural gas and other petroleum resource exploration and production, including addressing the technology challenges for small producers, safe operations and environmental mitigation (including reduction of greenhouse gas emissions and sequestration of carbon).”
- Calls for four elements in the program.
  - The technology and “architecture” for drilling to water depths greater than 15,000 feet.”
  - “Unconventional natural gas and other petroleum resource exploration and production technology.”
  - “Technology challenges of small producers.”
  - Complementary research by the Energy Department’s National Energy Technology Laboratory.”
- Requires DOE to contract “with a corporation that is structured as a consortium” to run the program with the approval of the Secretary of Energy. The consortium is to:
  - Issue research project solicitations, award research projects to successful applications and disburse research funds.
- Mandates that the government put \$50 million a year from the proceeds of royalties paid by the oil and gas industry into the program.
  - Of that, 75 percent – \$37.5 million – is earmarked for the consortium for research.
    - The consortium can retain 10 percent – or \$3.7 million to pay its expenses. (Melanie Kenderdine, Washington vice-president of the Gas Technology Institute, which was instrumental in founding and financing RPSEA, said in an interview that her organization will have a \$1 million-a-year contract to manage the RPSEA program related to onshore gas research.)
  - The other 25 percent —\$12.5 million — is to go to DOE’s National Energy Technology Laboratory for complementary research.
- Authorizes an expenditure of another \$100 million per year for 10 years on the program, but, these funds, unlike the already-mandated spending of the \$50 million from royalties, must be appropriated by Congress.



- Orders a tight schedule for selecting a consortium — giving a distinct advantage to RPSEA, which spent three years in preparation.
- Congress told DOE to solicit proposals from “eligible consortia” within 90 days of enactment of the law, which President George W. Bush signed on August 8, 2006; required submission of proposals within 180 days of enactment and required award of the contract within 270 days of enactment.
- Allows consortium members to win grants individually or as part of a “research collaboration” as long as the law’s conflict of interest requirements are met. The conflict of interest provisions apply only to consortium board members, officers and employees in decision-making capacities:
  - They are required to disclose their financial links and those of their spouses and minor children to grant applicants and recipients “unless such relationships or interests would be considered to be remote or inconsequential” and to recuse themselves from oversight where there is a conflict.
  - The loopholes are large:
    - The law does not require disclosure of financial links that one’s adult children, parents, siblings, in-laws or other relatives might have with grant applicants or recipients.
    - The law doesn’t say who will decide whether financial links are “remote or inconsequential,” apparently leaving that judgment to those who are required to make disclosures.
    - The law does require those who disclose conflicts of interest to recuse themselves “from any oversight” under one of its sections, Section 999B(f)(4).

That section, however, does not appear to exist.

## Endnotes

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